



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2013-0113; FRL- 9810-7]**

**Approval and Promulgation of Air Quality Implementation Plans;  
West Virginia; Prevention of Significant Deterioration**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is disapproving a narrow portion of a State Implementation Plan (SIP) revision submitted by the State of West Virginia on August 31, 2011. EPA is taking this final action because the submittal does not satisfy the Federal requirement for inclusion of condensable emissions of particulate matter (condensables) within the definition of “regulated new source review (NSR) pollutant” for fine particulate matter (PM<sub>2.5</sub>) and particulate matter emissions less than or equal to ten micrometers in diameter (PM<sub>10</sub>). In addition, because West Virginia’s August 31, 2011 SIP revision does not adequately account for condensable emissions within the definition of “regulated NSR pollutant,” EPA is also disapproving specific Prevention of Significant Deterioration (PSD) portions of related infrastructure SIP submissions required by the Clean Air Act (CAA) to implement, maintain, and enforce the 1997 fine particulate matter (PM<sub>2.5</sub>) and ozone National Ambient Air Quality Standards (NAAQS), the 2006 PM<sub>2.5</sub> NAAQS, and the 2008 lead and ozone NAAQS. This action is being taken under the CAA.

**DATES:** This final rule is effective on [insert date 30 days from date of publication].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2013-0113**. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov)

website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

**FOR FURTHER INFORMATION CONTACT:** Mike Gordon, (215) 814-2039, or by e-mail at [gordon.mike@epa.gov](mailto:gordon.mike@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

EPA granted full approval of West Virginia's August 2011 SIP submission and the PSD portions of related infrastructure submissions required by the CAA on October 17, 2012 (77 FR 63736) but took no action on the narrow issue of the requirement to include condensable emissions in the definition of "regulated NSR pollutant" in the State's PSD program for PM<sub>2.5</sub> and PM<sub>10</sub>. EPA has subsequently determined that the omission of condensables from this definition in the state's regulation at 45CSR14 is cause for disapproval of that narrow portion of the SIP submittal and the related infrastructure submissions.

As a result of this omission, on March 15, 2013 (78 FR 16449), EPA proposed disapproval of a

narrow portion of the August 2011 SIP revision, as well as specific PSD portions of related infrastructure submissions required by the CAA to implement, maintain, and enforce the 1997 PM<sub>2.5</sub> and ozone NAAQS, the 2006 PM<sub>2.5</sub> NAAQS, and the 2008 lead and ozone NAAQS. A full discussion on the background of this action and other related actions are available in the NPR. No comments were received during the public comment period.

## **II. Summary of SIP Revision**

This action disapproves the remaining narrow portion of the August 2011 SIP submission in which EPA took no action in the October 17, 2012 final rule, specifically, the requirement to include condensables in the definition of “regulated NSR pollutant.” Also, because condensables must be included in a PSD program by CAA section 110(a)(2)(C), (D)(i)(II) and (J), EPA is disapproving specific PSD portions of related infrastructure submissions which are necessary to implement, maintain, and enforce the 1997 PM<sub>2.5</sub> and ozone NAAQS, the 2006 PM<sub>2.5</sub> NAAQS, and the 2008 lead and ozone NAAQS.

## **III. Final Action**

EPA is disapproving the narrow portion of West Virginia’s August 2011 SIP submission related to the failure to include condensables in the definition of “regulated NSR pollutant” for PM<sub>2.5</sub> and PM<sub>10</sub>. EPA is disapproving this narrow portion of West Virginia’s August 2011 SIP submission because the definition does not satisfy the requirement that PM<sub>2.5</sub> and PM<sub>10</sub> emissions must include gaseous emissions which condense to form particulate matter at ambient temperatures. Because these grounds for disapproval are narrow and extend only to the lack of condensables within the definition of “regulated NSR pollutant”, this disapproval does not alter EPA’s October 17, 2012 approval of the remaining portions of West Virginia’s August 2011 SIP

submittal.

Additionally, EPA is disapproving specific portions of West Virginia's infrastructure SIP submissions dated December 3, 2007, December 11, 2007, April 3, 2008, October 1, 2009, October 26, 2011, and February 17, 2012 (collectively, the West Virginia infrastructure SIP submissions) which address certain obligations set forth at CAA sections 110(a)(2)(C), (D)(i)(II) and (J) relating to the West Virginia PSD permit program. Because West Virginia's definition of "regulated NSR pollutant" in 45CSR14 does not include condensable particulate emissions, EPA is determining that West Virginia's infrastructure SIP submissions do not meet certain statutory and regulatory obligations relating to a PSD permit program set forth at CAA sections 110(a)(2)(C), (D)(i)(II) and (J). EPA is disapproving the narrow portion of the October 26, 2011 and February 17, 2012 infrastructure SIP submissions from West Virginia because West Virginia has not met its obligations relating to the PSD permit program pursuant to CAA section 110(a)(2)(C), (D)(i)(II), and (J) due to the failure to include condensables in the definition of "regulated NSR pollutant." EPA is also disapproving the narrow portions of the December 3, 2007, December 11, 2007, April 3, 2008, and October 1, 2009 infrastructure SIP submissions from West Virginia because West Virginia has not met its obligations relating to the PSD permit program pursuant to CAA section 110(a)(2)(D)(i)(II) for the 1997 PM<sub>2.5</sub> and ozone NAAQS and the 2006 PM<sub>2.5</sub> NAAQS due to the failure to include condensables in the definition of "regulated NSR pollutant." Specific infrastructure elements which EPA is disapproving and their submittal dates are listed in the following table.

<b>Submittal Dates</b>	<b>NAAQS</b>	<b>Infrastructure Element(s) Disapproved in this Action</b>
December 11, 2007 April 3, 2008	1997 PM <sub>2.5</sub>	110(a)(2)(D)(i)(II)
December 3, 2007 December 11, 2007	1997 ozone	110(a)(2)(D)(i)(II)
October 1, 2009	2006 PM <sub>2.5</sub>	110(a)(2)(D)(i)(II)
October 26, 2011	2008 lead	110(a)(2)(D)(i)(II), (C), and (J)
February 17, 2012	2008 ozone	110(a)(2)(D)(i)(II), (C), and (J)

Under CAA section 179(a), final disapproval of a submission that addresses a requirement of a Part D Plan (CAA sections 171- 193), or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) starts a sanction clock. The specific provisions in the submissions EPA is disapproving, due to the omission of condensables in the definition of “regulated NSR pollutant”, were not submitted by West Virginia to meet either of those requirements. Therefore, this disapproval does not trigger sanctions under CAA section 179.

The full or partial disapproval of a SIP revision triggers the requirement under CAA section 110(c) that EPA promulgate a federal implementation plan (FIP) no later than two years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. From discussions with West Virginia, EPA anticipates that the State will make a submission rectifying the deficiency regarding condensables. Further, EPA anticipates acting on West Virginia’s submissions within the two year time frame prior to our FIP obligation on this very narrow issue. In the interim,

EPA expects the State to account for condensables in emissions of PM<sub>2.5</sub> and PM<sub>10</sub> consistent with Federal regulations for PSD permitting.

#### **IV. Statutory and Executive Order Reviews**

##### **A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this case, EPA disapproving a narrow portion of the West Virginia August 2011 SIP submittal and PSD portions of other related infrastructure submissions required by the CAA that do not meet Federal requirements. This action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks

subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this rule to disapprove a narrow provision in the August 2011 SIP submission and to disapprove narrow portions related to the definition of “regulated NSR pollutant” in the West Virginia infrastructure SIP submissions is not approved to apply in Indian country located in the state, and EPA notes that this action will not impose substantial direct costs on tribal governments or preempt tribal law.

#### **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication

of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action disapproving a narrow portion of the August 2011 West Virginia SIP submissions and certain PSD related infrastructure submissions may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Lead, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 25, 2013.

W. C. Early,  
Acting Regional Administrator,  
Region III.



40 CFR Part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

**Subpart XX--West Virginia**

2. In § 52.2522, paragraph (j) is added to read as follows.

**§ 52.2522 Approval status.**

\* \* \* \* \*

(j)(1) EPA is disapproving a narrow portion of West Virginia’s August 31, 2011 submittal because it does not satisfy the requirement that emissions of PM<sub>2.5</sub> and PM<sub>10</sub> shall include gaseous emissions which condense to form particulate matter at ambient temperatures. This disapproval extends only to the lack of condensable emissions within the definition of “regulated NSR pollutant,” found at 45CSR14 section 2.66, and does not alter EPA’s October 17, 2012 (77 FR 63736) approval of the remaining portions of West Virginia’s August 2011 SIP submittal.

(2) EPA is disapproving specific portions of West Virginia’s infrastructure SIP submissions dated December 3, 2007, December 11, 2007, April 3, 2008, October 1, 2009, October 26, 2011, and February 17, 2012 which address certain obligations set forth at CAA sections 110(a)(2)(C), (D)(i)(II) and (J) relating to the West Virginia PSD permit program. Because West Virginia’s definition of “regulated NSR pollutant” in 45CSR14 does not address condensables for PM<sub>2.5</sub> and PM<sub>10</sub> emissions, EPA is determining that West Virginia’s infrastructure SIP submissions do not meet certain statutory and regulatory obligations relating to a PSD permit program set forth at CAA sections 110(a)(2)(C), (D)(i)(II) and (J) for the narrow issue of condensables as set forth

in the following table.

<b>Submittal Dates</b>	<b>NAAQS</b>	<b>Infrastructure Element(s) Disapproved in this Action</b>
December 11, 2007; April 3, 2008	1997 PM <sub>2.5</sub>	110(a)(2)(D)(i)(II)
December 3, 2007; December 11, 2007	1997 ozone	110(a)(2)(D)(i)(II)
October 1, 2009	2006 PM <sub>2.5</sub>	110(a)(2)(D)(i)(II)
October 26, 2011	2008 lead	110(a)(2)(D)(i)(II), (C), and (J)
February 17, 2012	2008 ozone	110(a)(2)(D)(i)(II), (C), and (J)

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